REMARKS/ARGUMENTS

In the office action dated April 6, 2007, claims 1 and 2 were rejected based on Pollin, U.S. Patent 6,041,315. In response to the office action, claims 1 and 2 have been amended, and new claims 3 - 25 have been added. Reconsideration of the claims in view of the following remarks is respectfully requested.

112 Rejections

Claims 1 and 2 have been rejected under 35 U.S.C. Section 112 Second Paragraph as indefinite and for failing to particularly point out and distinctly claim the invention. In response, claims 1 and 2 have been amended to clarify the claims, and to eliminate 112 issues. In view of these amendments, claims 1 and 2 are considered to be in conformance with the cited statute, and the Applicants respectfully request that the rejection under this section be withdrawn.

102 Rejections

Claim 1 has been rejected under 35 U.S.C. Section 102. Reconsideration in view of the following remarks is respectfully requested.

As recited in claim 1, the invention comprises a system in which a <u>third party service provider</u> evaluates checks provided to a merchant by a consumer. The merchant enters data related to the transaction into a local system, and transmits the data to a third party service provider computer, which analyzes the data and determines a probability that the check will be honored. The probability is then transmitted to the merchant, thereby limiting the need for the merchant to analyze check viability. The present invention, therefore, eliminates the need for a merchant working on a transaction to perform a check analysis. The present invention, moreover, can provide a guarantee that a check will be paid, irrespective of whether the actual level of funds in an account is ascertained.

Pollin discloses an automated system for collecting payments. The automated system is run by a payee on a local computer system that includes software for verifying the bank ABA number account number. In addition, a fraud analysis can be performed based on the debtor's zip code, and a database of overdrawn account numbers and bad check passers may also be checked. When any of the data is inappropriate, the verification system provides an error or warning message to the payee operator, alerting the operator to take corrective action. The system, therefore, relies heavily on the analysis and action of the operator. Before accepting a check, moreover, the operator may be required to verify funds availability directly with the financial institution, or to obtain a check guarantee. (Col. 10, lines 43 - 45)

- 8 -

Alternatively, a fax modem can be used to evaluate whether sufficient funds are in an account (col. 12, lines 10 - 27). After the check is approved by the operator, the payee prints a draft for deposit. This draft is then executed by the payee as signatory for the payor.

Pollin, therefore, fails to disclose a system in which a third party service provider provides an analysis of a check before it is accepted by a merchant. Pollin, rather, discloses a check verification that is performed by the operator with the aid of data acquired at a local computer. The operator receives individual analyses of the various transaction data input into the computer, and draws his or her own conclusions about whether to accept a check. The operator never receives an analysis of a probability that a check will be accepted. Pollin, therefore, does not anticipate claim 1, as amended, and the Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. Section 102 be withdrawn.

Claim 1, moreover, recites an image transfer device for imaging the check and an image repository for storing the images, and claim 2 recites including an image of the check on a sight draft. In the office action it is asserted that Pollin discloses imaging a check in claims 13 and 18. Claim 13 recites "archival record storage" for storing "information describing past drafts". Claim 18 recites storing postdated draft information for generating a draft on a later date. Neither of these claims, therefore, disclose imaging of any kind. Neither, of these claims, moreover, discloses or suggests providing an image on a sight draft as recited in claim 2. For this reason as well, claims 1 and 2 are differentiated from the Pollin reference.

Claim 1 additionally recites transmitting payment for the check from the service provider to a bank account of the merchant. Pollin, again, fails to disclose a third party service provider, and fails to disclose a third party service provider that transmits payment for a check.

Claim 1 further recited an automated process for the third party service provider to indemnify a merchant for a bad check. Pollin, again, did not disclose a third party service provider, or any indemnification process.

103 Rejections

The Whittelsey reference, cited in the 103 rejection of claim 2, discloses two check services that handle telephone check transactions. The first, Redi-Check, receives a checking account number and creates a demand draft payable to a merchant. The reference does not discuss how, or even if, Redi-Check evaluates the check. The second, Checks-by -Phone, handles "phone-check processing". Again, there is no disclosure indicating how or whether

- 9 -

any evaluation is done. Therefore, both independent claim 1 and claim 2 are distinguished over the combination of Pollin and Whittelsey.

New Claims 3 - 25

New claims 3 - 25 have been added. These claims also differentiate over the cited reference, and the applicants respectfully request consideration of these claims.

New claim 3 is directed to a method for processing checks, and recites the steps of transmitting check and transaction data to a service provider. The service provider compares the check and transaction data to a statistical database to determine a probability that the check will be honored, and transmits an indicator of the probability that the check will be accepted to the merchant. As recited in claim 11, the probability can provide a simple instruction of accept or decline.

As recited in claim 4, upon acceptance of the check, payment can be immediately transmitted from the service provider's account to the merchant's account, thereby effecting payment immediately without the need to access the payors account. As recited in claim 8, the method can also include the step of indemnifying the merchant when a check is returned, e.g. of guaranteeing the check based on the statistical analysis. Pollin does not disclose any of these steps.

New claim 15 is directed to a check authorization and payment system. The system includes a merchant system and a service provider system. The merchant system is programmed to acquire check and transaction data, and to transmit the check and transaction data to the service provider system. The service provider system is programmed to compare the check and transaction data to statistical data stored in a database to determine a probability that the check will be accepted, to transmit the probability to the merchant system. A sight draft of the check is printed for deposit when the indication of the acceptance of the check is received from the merchant system, and is processed for payment.

Again, Pollin does not disclose a third party service provider system that analyzes the check data and provides a probability analysis to the merchant system. Pollin, rather, discloses a system in which the merchant system performs its own analysis.
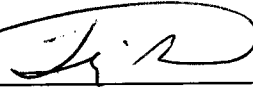
Conclusion

In view of the foregoing amendments and remarks, claims 1 - 25 are considered to be in condition for allowance, and a notice of allowance for these claims is respectfully requested.

No fees are believed necessary for entry of this response. However, the Commissioner is authorized to charge any fees under 37 CFR § 1.17 that may be due on this application to Deposit Account 17-0055. The Commissioner is also authorized to treat this amendment and any future reply in this matter requiring a petition for an extension of time as incorporating a petition for extension of time for the appropriate length of time as provided by 37 CFR § 136(a)(3).

Respectfully submitted,

Dated July 6, 2007

By:

Terri S. Flynn
Quarles & Brady LLP
Reg. No. 41,756
Attorney for Applicant
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497
(414) 277-5229